on this point,[7] and the opinions, which recognize the distinction between the services rendered by a telephone company and other methods of transferring intelligence or matter, should be controlling in future litigation of the kind.

CONSTRUCTIVE POSSESSION UNDER COLOR OF TITLE. — Ordinarily the acquisition of realty by means of an adverse holding is limited to the *pedis possessio*, or actual occupation.[1] In contemplation of law, however, adverse possession is sometimes extended to apply to unoccupied lands held under color of title. This doctrine of constructive possession has been almost wholly developed in this country and Canada where it has been found well adapted to the exigencies of unsettled regions.[2] England has never fully admitted the refinement.[3]

Of the requirements for a constructive adverse possession several are universally admitted, while as to others there is a decided conflict. (1) There must be color of title; namely, that which has the appearance of title but which is in fact none.[4] Almost universally some instrument is required,[5] and decisions which allow color of title without a writing are really authorities on what constitutes a sufficient *actual* possession.[6] The writing must accurately describe the premises and must purport to convey title.[7] It appears, therefore, that color of title is important in showing first, the character of the claim, and second, its extent.[8] In a recent decision it is properly regarded as a piece of evidence. *Roe* v. *Tennessee Ry. Co.*, 50 So. 230 (Ala.). (2) There must be a claim of ownership as well as color of title, and hence the instrument must purport to convey a fee.[9] (3) There must be an actual possession of part of the land indicative of a further claim. The function of this requirement is to give notice of the adverse claim and to afford ground for a possessory action.[10] So it is not enough that the actual possession be only of the claimant's own land;[11] and any alienation of the *pedis possessio* is fatal.[12] Whether or not the part constructively held must be a reasonable appendage of the part actually possessed, is disputed; the slight weight of authority leaning against such requirement.[13] (4) As to

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[7] But *cf.* Rural Home Telephone Co. *v.* Kentucky & I. Telephone Co., 107 S. W. 787; Campbellsville Telephone Co. *v.* Lebanon L. & L. Telephone Co., 118 Ky. 277; Cumberland Telephone & Tele. Co. *v.* Cartwright Creek Telephone Co., 108 S. W. 875; Matter of Baldwinsville Telephone Company, 24 N. Y. Misc. 221.

[1] Norris *v.* Ile, 152 Ill. 190.

[2] Simpson *v.* Downing, 23 Wend. (N. Y.) 315; McKinnon *v.* McDonald, 13 Grant Ch. (N. C.) 152.

[3] In a recent English decision the court declared that constructive possession is to be inferred only to give effect to a contractual obligation. Glynn *v.* Howell, 100 L. T. R. 324 (Ch. Div., May 1, 1909).

[4] Wright *v.* Mattison, 18 How. (U. S.) 50.

[5] Allen *v.* Mansfield, 108 Mo. 343.

[6] Hodges *v.* Eddy, 38 Vt. 327; Allen *v.* Holton, 20 Pick. (Mass.) 458.

[7] Humphries *v.* Huffman, 33 Oh. 395; Deffback *v.* Hawke, 115 U. S. 392.

[8] Welborn *v.* Anderson, 37 Miss. 155.

[9] Bakewell *v.* McKee, 101 Mo. 337; Dewey *v.* McLain, 7 Kan. 126.

[10] Bailey *v.* Carleton, 12 N. H. 9; Steedman *v.* Hilliard, 3 Rich. (S. C.) 101.

[11] Bailey *v.* Carleton, *supra.*

[12] Cunningham *v.* Frandtzen, 26 Tex. 34.

[13] Ellicott *v.* Pearl, 10 Pet. 412; Hicks *v.* Coleman, 25 Cal. 122. In New York it is

bona fides as a requisite, there is also a conflict, but by the decided weight of authority the claimant must have an honest belief in the validity of his title.[14] In some jurisdictions nothing less than fraud in securing the color of title constitutes *mala fides*.[15] On principle the only defense of good faith as a requirement for constructive adverse possession, though not for actual adverse possession, is the desire to restrict the scope of the former; for the doctrine of adverse possession is in reality extended to cases of claims under colorable title, not because of a *bona fide* reliance on the deed, but because the paper title is evidence of the extent of the claim.

The fiction of constructive adverse possession may be justified only if the disseisee must have notice of the claim and its extent. That an adverse claim exists, the actual possession of a part serves as notification; the color of title is evidence of the extent and nature of the claim.[16] If the color of title, therefore, is accessible to the true owner, he is reasonably chargeable with notice of the extent of the claim.[16] But it is not universally required that the color of title be recorded;[17] and to apply the doctrine of constructive possession under such circumstances is totally to disregard the principle underlying all adverse possession; namely, that the disseisee is justly chargeable with laches where the possession is such as is calculated to inform him of its existence.[18] In a number of states, statutes obviate this hardship by requiring the color of title to be recorded.[19]

WHAT CONSTITUTES AN INSURABLE INTEREST IN A LIFE. — Although doubts may exist in a few jurisdictions,[1] an insurable interest is, by statute or otherwise, almost universally requisite to the validity of a contract of life insurance;[2] for without such an interest the contract would be opposed to public policy, both as being a wager and as placing upon the insured a dangerous temptation to bring to pass the event upon which recovery rests.[3] As to what constitutes an insurable interest in a life the language of the courts has been at times confusing, although the actual decisions are less conflicting than the opinions might indicate.

The decisions may properly be divided into three classes. (1) Whenever the life is under a definite legal obligation to the insured, the performance of which would be rendered impossible or seriously hampered by death, the insured has a very real interest in the continuation of the life, and the policy is valid. So a master has an insurable interest in the life of a servant

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well established that constructive possession is limited to a small tract. Thompson *v.* Burhans, 79 N. Y. 93.

[14] Godfrey *v.* Dixon, 228 Ill. 487; Smith *v.* Young, 89 Ia. 338. *Contra:* Humbert *v.* Trinity Church, 24 Wend. (N. Y.) 587; Roe *v.* Tenn. Ry. Co., 50 So. 230 (Ala.).

[15] Foulke *v.* Bond, 41 N. J. L. 527, 541.

[16] Bailey *v.* Carleton, *supra.*

[17] Avent *v.* Arrington, 105 N. C. 377, 389; Jones *v.* Perry, 10 Yerg. (Tenn.) 59. *Contra,* Nye *v.* Alfter, 127 Mo. 529.

[18] Foulke *v.* Bond, *supra;* Bailey *v.* Carleton, *supra.*

[19] Breckenridge Co. *v.* Scott, 114 S. W. 930 (Tenn.); Holland *v.* Ferris, 114 S. W. 845 (Tex.).

[1] Trenton Mutual Life & Fire Insurance Co. *v.* Johnson, 24 N. J. L. 576.

[2] 1 Cooley, Briefs on Insurance, 246.

[3] Ruse *v.* Mutual Benefit Life Insurance Co., 23 N. Y. 516. See Cooke on Life Insurance, § 58.